



McGeorge Law Review

Volume 3 | Issue 1

Article 22

1971

Workmen's Compensation

University of the Pacific, McGeorge School of Law

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Recommended Citation

University of the Pacific, McGeorge School of Law, *Workmen's Compensation*, 3 PAC. L. J. 416 (1972).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol3/iss1/22>

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Workmen's Compensation

Workmen's Compensation; claims against uninsured employers

Labor Code §§3715-3727 (new); 3706 (amended); 3715 (repealed).

AB 1191 (Brathwaite); STATS 1971, Ch. 1598

Revises procedures when claim is brought against an uninsured employer. Provides for penalty assessments to be paid by uninsured employers.

Section 3715 now provides that any employee whose employer has failed to secure compensation insurance as required by the Labor Code, may in lieu of bringing a civil action against the employer pursuant to §3706, file an application for compensation with the appeals board. The appeals board is to hear and make a determination on the application and may direct the employer to make a payment to the employee or post bond.

Section 3716 provides that if the employer fails to pay any compensation to the employee to which he is entitled pursuant to §3715, or fails to post bond within a period of 10 days after notification, the award shall be paid to the employee out of a state fund for that purpose (upon application of the employee).

Section 3717 provides that a payment made pursuant to §3716 constitutes a liquidated claim against the employer and authorizes the state to proceed in a civil action against the employer for recovery of the amount paid.

An answer or demurrer to such a complaint is to be filed within 10 days, the reply or demurrer to the answer within 20 days, and the demurrer to the reply within 30 days after the return day of the summons, or service by publication. All motions and any demurrer are to be submitted to the court within 10 days after the same are filed. As soon as the issues are made up in any such case, it shall be placed at the head of the trial docket and shall be first in order for trial.

Section 3718 permits the state to join any action against an employer pursuant to §3718 with an action against that employer pursuant to §3722 (discussed *infra*).

Section 3719 permits the state to compromise, or prosecute to final judgment any suit brought pursuant to §3717.

Sections 3720 and 3721 permit the state to establish a lien against the employer's property in favor of the state when such employer has not obtained workmen's compensation insurance, and provide procedures for the establishment and removal of such lien; this lien is to have the same force, effect, and priority as a judgment lien.

Sections 3722-3727 provide for the determination and payment of a penalty by an uninsured employer in an amount equal to the insurance premium applicable to his payroll for the preceeding 12 months. If the employer fails to pay the assessed penalty, the state may obtain a judgment against the employer for the amount of the assessed penalty. This judgment is to bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by law on other judgments rendered for claims for taxes. The state may also establish a lien against the employer's real and personal property for the amount of the assessed penalty.

Prior to the enactment of this provision, an employee could either claim directly against the employer in a civil action or could claim against the employer by application to the appeals board; but there were no provisions authorizing payment by the state for a claim against an uninsured employer.

Workmen's Compensation; disability payments

Labor Code §4651 (amended).

AB 978 (Brown); Stats 1971, Ch 569

Section 4651, as amended, requires permanent or temporary disability payments which are in the form of written instruments to be *immediately* negotiable and payable in cash, on demand, without discount at some established place of business in the state. Prior to this amendment permanent or temporary disability payments in the form of written instruments were not specifically required to be *immediately* negotiable.

See Generally:

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Workmen's Compensation* §80 (7th ed. 1960).

Workmen's Compensation; claims procedure, notice

Labor Code §§5501, 5502, 5504 (amended).

SB 476 (Grunsky); STATS 1971, Ch 393

Section 5501 of the Labor Code provides that any party in interest, his attorney, or other representative, authorized in writing, may file an application with the Workman's Compensation Appeals Board. This section is amended to provide that upon the filing of such application, a copy of the application shall forthwith be served upon all adverse parties by the appeals board. Prior to the enactment of Chapter 393, there was no requirement in §5501 that a copy of an application to the appeals board be served upon adverse parties by the board.

Section 5503, as amended, provides that a hearing shall be held not less than 10 days nor more than 30 days after the filing *by the applicant or his attorney of a declaration that he is ready to proceed*. Prior to the enactment of Chapter 393 a hearing was required to be held within 30 days but not less than 10 days from filing of the application, unless otherwise agreed by all parties to the action.

Section 5504 of the Labor Code requires the notice of the time and place of the hearing to be served upon the applicant and all adverse parties. Such notice may be served either in the manner of service of a summons in a civil action, or in the same manner of notice authorized or required to be served by other provisions of the Workman's Compensation laws. Chapter 393 eliminates the requirement in §5504 that a copy of the application be served upon the applicant and all adverse parties, since this is now done by the board pursuant to §5501.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, *California Workmen's Compensation Practice* §§6.3, 6.5, 6.15, 7.10, 9.10 (1963).
- 2) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Workmen's Compensation* §§111, 125, 126 (7th ed. 1960).

Workmen's Compensation; settlement with third party tortfeasors

Labor Code §§3859, 3860 (amended).

SB 253 (Grunsky); STATS 1971, Ch 485

Permits an employee to settle with a third party tortfeasor without consent of his employer; defines the extent of an employer's subrogation rights when such a settlement occurs.

Sections 3859 and 3860 of the Labor Code pertain to the subrogation rights of employers under workmen's compensation. These sec-

tions provide for requirements and rights regarding a settlement between employee or employer and a third party tortfeasor. Where a settlement is made between the employee and the third party tortfeasor, notice of the settlement must be given to the employer; but consent of the employer is not required. However, the settlement is subject to the employer's right to proceed for recovery of compensation paid to the employee in accordance with §3852 of the Labor Code (Rights of employee and employer in an action against a third person).

Where the settlement is between the employer and a third party tortfeasor, notice of the settlement must be given to the employee and his written consent is required.

The amount of any settlement between the employee and the third party tortfeasor, or between the employer and the third party tortfeasor, is subject to the employer's rights to reimbursement for compensation paid, or for which the employer has become obligated to pay, and any special damages the employer would be entitled under §3852, together with expenses and attorney fees, if any, as limited by §§3860(c)-3869(f).

Prior to the passage of Chapter 485, a settlement between an employee and a third party required a written consent of the employer.

COMMENT

The apparent affect of this chapter is to encourage and facilitate employee-third party settlements in that such settlements no longer require consent of the employer. Prior to passage of this chapter a concurrently negligent employer had no right to reimbursement for compensation [Witt v. Jackson, 57 Cal. 2d 57 (1961)], but by means of §3859, could invalidate any settlement reached by the employee and third party by failing to give consent to such a settlement. As a consequence an employee was forced to litigate and bear the time and expense therefrom because his settlement with the third party tortfeasor was not valid. [See Comment, *Workmen's Compensation, The Impact of the Witt v. Jackson Rule on the Law of Third Party Settlements*, 17 U.C.L.A. L. REV. 651 (1970)].

See Generally:

- 1) CAL. LABOR CODE §3852 *et seq.*
- 2) CONTINUING EDUCATION OF THE BAR, *California Workmen's Compensation* §§ 14.24, 19.30 (1963).